

***Summary of Legislation related to 2013 HB 630 and the Effort to Modernize and Simplify Montana's Food Regulations***

**Background:** During the 2013 legislative session, the legislature through HB 630 commissioned the Department of Public Health and Human Services, the Department of Agriculture, and the Department of Livestock to look at ways to streamline food safety-related statutes and to allow ways to bring new products to market through a safe cottage food industry.

Some key items addressed by this bill, include:

- implementing safety standards and limited oversight for cottage food operations and various retail food establishments;
- providing for local boards of health to oversee and issue permits for temporary food establishments;

**Bill Section Description:**

<b>Section 1</b>	<ul style="list-style-type: none"> <li>• Provides conditions for registration of cottage food operations</li> <li>• Items must be prepared in a home-based setting for direct sale to consumers.</li> <li>• Exempts cottage food from wholesale food licensing and inspection.</li> <li>• Prohibits sales of cottage foods in retail food and wholesale establishments as the intent is to allow direct sales to consumers.</li> </ul> <p><b>Reason:</b> The creation of a cottage food registration allows producers of non-potentially hazardous foods to sell food on a relatively small scale without significant upfront investment or licensing. Such operations are common in many states and allow small producers to sell a safe product whose origins and ingredients are clear directly to the consumer.</p>
<b>Section 2</b>	<ul style="list-style-type: none"> <li>• Describes how a cottage food operation registers with a local health department.</li> <li>• Provides a procedure that allows due process for the applicant if their operation is denied registration by the health department.</li> </ul> <p><b>Reason:</b> This section is necessary so the requirements for a cottage food operation are clear for the operator, the consumer, and the local health authority.</p>
<b>Section 3</b>	<ul style="list-style-type: none"> <li>• Specifies that a temporary food establishment (a small operation that operates for a limited number of days at events such as fairs or concerts) must obtain an operating permit from the local health authority (not the state as now required)</li> <li>• Two types – 1) a profit-based operation, which must pay a permit fee and 2) a non-profit type. Both must comply with department rules.</li> </ul> <p><b>Reason:</b> This section makes it clear that although not for profits are exempt from paying a fee they still must follow the food safety rules that are in place in Montana. Shifting this to local health authorities allows for timelier licensing for short-term events.</p>

<b>Section 4</b>	<ul style="list-style-type: none"> <li>• Clarifies many of the requirements for farmers markets and food stands.</li> <li>• Specifies that a person operating only at farmers markets and selling non-potentially hazardous food is exempt from registration and licensing requirements.</li> <li>• Allows DPHHS to approve future cottage food items.</li> </ul> <p><b>Reason:</b> This section allows individuals that currently sell only at farmers markets to avoid a registration fee, maintaining the current system.</p>
<b>Section 5</b>	<p>Amends 50-31-103 to keep retail food establishment terminology consistent.</p> <p><b>Reason:</b> Consistent definitions are important to allow operators and regulators to communicate clearly regarding products and requirements.</p>
<b>Section 6</b>	<p>Amends 50-46-309 to fit terminology but also say that marijuana-infused products must meet local board of health requirements for retail food establishments even if being prepared in a cottage food operation.</p> <p><b>Reason:</b> Current MCA requires marijuana infused product providers to follow local retail food ordinances and register with the department. This clearly states that those requirements to apply to cottage food operators as well.</p>
<b>Section 7</b>	<p>Amends section 50-50-101, MCA.</p> <ul style="list-style-type: none"> <li>• Clarifies the purpose of chapter 50 as using regulation to prevent and eliminate conditions and practices that endanger public health."</li> </ul> <p><b>Reason:</b> Minor revision intended to clarify intent making the MCA easier to read and understand.</p>
<b>Section 8</b>	<p>Amends definition section 50-50-102, MCA.</p> <ul style="list-style-type: none"> <li>• Clarifies several issues identified during the HB 630 study bill effort.</li> </ul> <p>New definitions include:</p> <ul style="list-style-type: none"> <li>• "Cottage food operation" and "Cottage food products" so that the requirements for this new industry can be understood.</li> </ul> <p>Other significant changes include:</p> <ul style="list-style-type: none"> <li>• "Contract Cook", which is an exemption under retail food establishments</li> <li>• "Mobile food establishments" to clarify the requirements for these types of retail food establishment licenses. Mobile food establishment licenses are a statewide license and have been subject to different interpretations and application of rules at the local level.</li> <li>• "Raw agricultural commodity" has been changed to include raw honey while also broadening the definition so that as long as a raw agricultural product has not been altered it will be easy to bring an agricultural commodity to market.</li> <li>• "Retail Food Establishment" details what a retail food establishment is and isn't. This lists all of the inclusions and exemptions in one place, as requested during public meetings for HB 630.</li> </ul>

	<ul style="list-style-type: none"> <li>• “Temporary food” establishment is defined to allow operations at a reoccurring event, such as Farmer’s Markets, as well as one-time events without incurring the cost of additional licenses.</li> </ul> <p><b>Reason:</b> Many of the exemptions to retail licensing listed in statute involve non-potentially hazardous foods. By striking the individual exemptions and using the term non-potentially hazardous it broadens the scope of what can be exempted allowing a greater variety of products generally considered to be safe to be marketed.</p> <p>Definitions related to cottage food were necessary because there are proposed requirements for them in other sections of the MCA so it is important that everyone knows what is being discussed. Changes made regarding mobile food establishments are part of a broader change in the MCA that would bring the plan review for mobiles to the state while keeping the license validation and inspection at the county level. This is intended to create more consistent interpretations of what can and can’t be licensed as a mobile operation, preventing problems when operating across county lines.</p> <p>The change to the retail food establishment definition brings together all of the exemptions and inclusions listed in various parts of the current MCAs so that they can all be found in one place.</p> <p>The change to the definition of temporary food establishments is important because it expands their ability to operate while also putting the permitting at the county level, allowing faster licensing turnaround time.</p>
<b>Section 9</b>	<p>Amends section 50-50-103, MCA, to allow the department to adopt rules and assess fees based on the complexity of the establishment seeking a retail license.</p> <ul style="list-style-type: none"> <li>• Allows the department to create standard rules for mobile food establishments and permitting fees along with registration for cottage food operations including the fees to be charged for operation.</li> <li>• Prevents the department or locals from prohibiting cottage food operations.</li> <li>• Revises the food safety advisory task force to include two designated members from the Departments of Agriculture, Livestock, and Public Health and Human Services along with up to six members of the public.</li> </ul> <p><b>Reason:</b> This change would allow the department to assign fees based on complexity of the establishment, so a small establishment that grills burgers wouldn’t pay as much as a large supermarket for example. The change to mobile food establishments brings plan review to the department, which would allow for a consistent approach to this review mitigating most of the licensing inconsistencies currently occurring for mobiles.</p> <p>The expansion of the food safety advisory task force would bring more voices to the table from a variety of perspectives creating more comprehensive guidance for</p>

	rule and code changes that affect food production.
<b>Sections 10 - 12</b>	<p>Section 10 through 12 extend existing laws to cottage food operations  Section 10 amends 50-50-105, MCA.</p> <ul style="list-style-type: none"> <li>Clarifies when diseased persons cannot work in retail food establishments and cottage food operations.</li> </ul> <p><b>Reason:</b> This change brings the code up to current standards of practice for how to deal with individuals who have a contagious disease and work in food service.</p> <p>Section 11 extends civil penalties to cottage food operations if violations occur.</p> <p><b>Reason:</b> This language expands statute adding the cottage food industry as an entity subject to penalties if found out of compliance with statute or rules.</p> <p>Section 12 extends to cottage food operations the cost of investigations if a cottage food operation loses a civil action</p> <p><b>Reason:</b> This is directly related to section 11. In situations where the department pursues civil penalties they are allowed to recover money, this expands that allowance to the new cottage food industry.</p>
<b>Section 13</b>	<p>Amends 50-50-201.</p> <ul style="list-style-type: none"> <li>Clarifies how temporary food establishments get permits from local authorities.</li> </ul> <p><b>Reason:</b> Input from public meetings indicated a need for temporary but reoccurring food establishments at events such as "Alive at Five" or some Farmer's Markets. This is not allowed under current statute, the two new definitions expand the time a temporary event can operate and also allow for these reoccurring events with a single fee.</p>
<b>Section 14</b>	<p>Revises exemption section 50-50-202</p> <ul style="list-style-type: none"> <li>Continues to exempt political subdivisions, including universities.</li> <li>Lists bartering situations, which were removed from definition section.</li> <li>Removes (strikes out) exemptions that were put into the definition section (50-50-102) regarding what a retail food establishment "is not."</li> </ul> <p><b>Reason:</b> There are many exemptions in the current statute, this section was re-written to tie those together so that it is easier to understand while also making it clear that cottage food operations are not to be licensed as retail food establishments.</p>
<b>Section 15</b>	<p>Amends section 50-50-203, MCA.</p> <ul style="list-style-type: none"> <li>Clarifies the license and permit application requirements.</li> <li>Puts temporary food establishments under the purview of local health departments.</li> </ul>

	<p><b>Reason:</b> Clarifying the wording makes it easier for operators to understand what is expected of them. Putting the temporary event permits in the hands of local health departments makes sense because often these operators are licensed, and inspected at the event before the state even has time to process the license.</p>
<b>Section 16</b>	<p>Amends section 50-50-205, MCA.</p> <ul style="list-style-type: none"> <li>• Allows the department to set licensing fees in rule based on retail food establishment complexity.</li> <li>• Allows the department to collect plan review fees for mobile establishment review conducted by the department.</li> <li>• Sets some limits on those fees and states how those fees are to be used.</li> <li>• Exempts sales of whole shell eggs from paying fees.</li> </ul> <p><b>Reason:</b> Setting fees based on establishment complexity is important because it allows the department to charge establishments doing less, less money, and those doing more, more money which is directly related to the amount of time it takes to conduct inspections of those facilities.</p> <p>Other parts of the proposed rule bring plan review of mobile food establishments to the state; this would allow the state to charge for that review to offset the cost of the new workload. However it also sets limits on those fees so that they are not exorbitant or over reaching. The need to exempt shell egg sales from paying fees is to ensure they aren't confused with another type of establishment that does need to pay fees.</p>
<b>Section 17</b>	<p>Amends section 50-50-208, MCA,</p> <ul style="list-style-type: none"> <li>• Requires that local boards of health submit a list of temporary food establishments and cottage food operations in their jurisdiction.</li> </ul> <p><b>Reason:</b> This is important so that if the department needs to issue a recall notice or contact these operators for health and safety reasons the ability exists.</p>
<b>Section 18</b>	<p>Amends section 50-50-209, MCA</p> <ul style="list-style-type: none"> <li>• Clarifies the process for canceling retail food establishment licenses, mobile food establishment licenses, and temporary food establishment permits.</li> </ul> <p><b>Reason:</b> This section was modified to clarify procedures should it become necessary to cancel a retail or mobile license or temporary permit.</p>
<b>Sections 19 - 21</b>	<p>Each section expanded to include temporary permitholders or mobile food establishments</p> <p>Section 19 Amends section 50-50-211, MCA.</p> <ul style="list-style-type: none"> <li>• Clarifies the due process awarded to a license or a temporary permit holder prior to cancelation of a license or permit.</li> </ul> <p><b>Reason:</b> This language is necessary to ensure that each holder is awarded due process before a license or permit is revoked.</p>

	<p>Section 20 Amends section 50-50-221, MCA</p> <ul style="list-style-type: none"> <li>• Adds wording related to locally held temporary food establishment permits and the process for cancelation when they are establishments that are licensed to do multiple activities, for example a retail grocery with a deli.</li> </ul> <p><b>Reason:</b> Needed to ensure that a cancelation procedure exists if that becomes necessary.</p> <p>Section 21 Amends section 50-50-213, MCA</p> <ul style="list-style-type: none"> <li>• Includes mobile establishment's licenses and temporary establishment permits when returning a license is necessary</li> </ul> <p><b>Reason:</b> Similar to section 19 and 20 the new license and permit types require that these parts of the code be amended to include them.</p>
<b>Section 22</b>	<p>Amends section 50-50-214, MCA.</p> <ul style="list-style-type: none"> <li>• Specifies how mobile establishment will have their licenses validated under the new model of plan review.</li> <li>• Adds a section on how a temporary food establishment permit will be validated.</li> </ul> <p><b>Reason:</b> Provides a license validation procedure similar to that used for other establishment types.</p>
<b>Section 23</b>	<p>Amends 50-50-215, MCA,</p> <ul style="list-style-type: none"> <li>• Adds language indicating what must occur if a local health officer refuses to validate a license or permit in the case of mobile food establishments, temporary food establishments, and cottage food operations as opposed to only retail food establishments.</li> </ul> <p><b>Reason:</b> This is important because it needs to be clear what happens to the newly proposed license and permit types when the health officer in a jurisdiction refuses to validate a license.</p>
<b>Section 24</b>	<p>Amends 50-50-301, MCA.</p> <ul style="list-style-type: none"> <li>• Clarifies that cottage food operations are not subject to inspection unless they are the focus of a complaint or outbreak investigation but allows them to request and pay for inspections voluntarily.</li> </ul> <p><b>Reason:</b> Cottage food operations are exempt from a number of things one of them being inspections. However this section is important because it makes it clear that if they are the subject of a complaint or an illness investigation then they may be inspected during reasonable hours. Given the nature of foods, non-potentially hazardous, and direct sales restriction such approaches are common.</p>
<b>Section 25</b>	<p>Amends 50-50-302, MCA.</p> <ul style="list-style-type: none"> <li>• Includes wording that allows the regulatory authority free access for investigations of complaints, illness, and outbreaks at all reasonable hours of</li> </ul>

	<p>cottage food operations and temporary food establishments.</p> <p><b>Reason:</b> Needed to ensure cottage food or temporary food establishments can be examined if implicated in an illness investigation to minimize further risks to the public.</p>
<b>Section 26</b>	<p>Amends 50-50-303, MCA.</p> <ul style="list-style-type: none"> <li>Includes the term registrant in addition to licensed establishments that may need to furnish a sample during an illness investigation.</li> </ul> <p><b>Reason:</b> Important addition because the term registrant applies to the new cottage food industry.</p>
<b>Section 27</b>	<p>Amends 50-50-305, MCA.</p> <ul style="list-style-type: none"> <li>Includes payments to local boards of health for inspections of mobile food establishments.</li> </ul> <p><b>Reason:</b> Clarifies that mobile food establishment license are included and that counties are paid for their inspections of those establishments.</p>
<b>Section 28</b>	<p>Amends 50-57-102, MCA. Fixes according to new definitions.</p> <p><b>Reason:</b> Necessary to make this section of the MCA consistent with other sections to alleviate confusion.</p>
<b>Section 29</b>	<p>Amends 81-22-208, MCA. Cross references with new definitions</p> <p><b>Reason:</b> Cross references with other definitions. Important to clarify when a retail food establishment license is needed.</p>
<b>Section 30</b>	<b>Codification instructions</b>

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